

401 WATER QUALITY CERTIFICATION FREQUENTLY-ASKED QUESTIONS

- Q. What is “401” and why do I need to get a certification from a state agency for a federal permit?*
- A. There are two sections under the Clean Water Act that refer to permits required for dredge and fill projects within the waters of the United States. Section 404 authorizes the U.S. Corps of Engineers to issue the permits. They have been given this authority because they have jurisdiction over U.S. (navigable) waters. The Corps, however, does not have jurisdiction over water quality issues. The State Water Resources Control Board and Regional Water Quality Control Boards have this jurisdiction in California. Section 401 authorizes the states to issue water quality certifications for dredge and fill projects within U.S. waters.
- What this all says is that you must get certification from us that your project will not significantly impact water quality or beneficial uses before the Corps can issue their permit.
- Q. You also issue waste discharge requirements (WDR) and NPDES permits. Why do I also need to get a 401 certification?*
- A. 401 certification is for the duration of the dredge/fill operation. The WDR and NPDES permits are for continued operation of a project that will result in discharge to ground or surface waters of the state. If the dredge/fill operation will take place for a long period of time and will result in discharges to waters of the state, we have the option of issuing WDR or NPDES permits. This will be equivalent to a waiver of 401 certification.
- Q. To whom should we address the application?*
- A. The application should be addressed to the Executive Officer of the Santa Ana Regional Water Quality Control Board. For quicker routing, send it to the attention of the 401 coordinator. A sample address block follows:
- Mr. Gerard J. Thibeault
Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3339
- Attn: 401 Coordinator
- Q. What comprises a complete application?*
- A. The “401 Certification Application-Information Package” outlines everything that we require for a complete application. In general, we need a copy of the federal permit application, the filing fee, a final CEQA document, and a complete description of the project, including where, size of project, anticipated environmental impacts, and mitigation for impacts.
- Q. How long will it take to get my certification or waiver?*
- A. If the proposed project requires a certification, which must be processed by our State Board staff, it may take up to 60 days or longer. Waivers are processed by us (Regional Board staff), and may take from 21 to 60 days, depending on the complexity of the project and our workload. These time estimates are from when we receive a complete application. Additionally, a more thorough project description will expedite processing. A template of the 401 waiver letter is available in Word 97 or plain text format. Providing your project information in the waiver letter format will save on processing time.
- Q. When will you notify me if I need to send you additional information?*
- A. We will notify you within 30 days of our receiving the application. You may wish to check with us if you do not hear anything within two weeks.
- Q. How much does it cost?*
- A. Section 2200, Title 23 of the California Code of Regulations specifies the filing fee based on area of fill or volume of material dredged. This information is also outlined in the application package. For projects that will require a certification, this is the fee that you must remand to us before we can complete processing the application.

Many of the projects for which we get applications are minor in nature and can be processed as a waiver. We have determined that processing a waiver costs \$500 worth of staff time. To save time and paperwork, we will accept the \$500 waiver fee up front, although we will require that you submit the remainder of the filing fee if further review indicates that a certification is necessary. We recommend that you first confer with someone in the Planning Section to verify that your project would qualify for a waiver.

Q. I also have to file with the Corps of Engineers, Department of Fish and Game, and possibly other local agencies. Do I have to repeat the information that I already gave to them on yet another form?

A. No, we encourage applicants to reference in the application letter where in the materials they send us we can find the information we need. Some of the information we ask for will be contained in the applications sent to the Corps or Fish and Game; that will work for us. The easier you make it for us to find the information we need, the quicker we can get the certification or waiver processed. If you prefer to fill out a form, one is enclosed with this package.

Q. Is there a cutoff above which a project requires a certification rather than a waiver?

A. Our cutoff is based primarily on impacts to water quality and/or beneficial uses. A large project that will not degrade water quality will qualify for a waiver; a small project that may cause heavy siltation in a waterbody that has a lot of fish and other aquatic life will probably need a full certification.

Additionally, for us to issue a 401 waiver, a project must fall under one of our waiver categories. You can obtain a copy of Resolution No. 96-9, "Waiver of Waste Discharge Requirements for Specific Types of Discharges," by contacting our office. If a project does not meet the specified criteria for coverage under any of the waiver categories, we usually must issue a certification, Waste Discharge Requirements, or an NPDES permit. Waiving or issuing waste discharge requirements is considered equivalent to waiving 401 certification.

The Waiver Categories include:

- Minor Dredging Projects (<1,000 cubic yards)
- Inert Waste Disposal Operations
- Bridge Seismic Retrofitting
- Projects Which Impact Wetlands and/or Riparian Habitats
- Sand, Gravel, and Quarry Operations
- Residential Wastewater Disposal Systems (septic tanks) Not Within Prohibition Areas
- Industrial and Commercial Wastewater Disposal Systems (septic tanks) Not Within Prohibition Areas
- Minor Stream Channel Alterations
- Monitoring Well Purge Water
- Well Drill Cuttings
- Incidental Discharge of Oily Wastewater During Oil Spill Response Activities
- Other Insignificant Discharges of Wastewater to Land (e.g., potable water pipeline draining, groundwater dewatering)

Q. This project is an emergency. How soon can you get the certification or waiver processed?

A. We consider only true emergencies as those defined by 33 CFR 325.2(e)(4) as a "situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures." This may include FEMA-funded projects or situations that pose an imminent danger to life or property. Waiting until the grading equipment is onsite before applying to us does not constitute an emergency.

For a waiver, we can get it processed as soon as you can get us a complete description of the project and evidence that the filing fee will be paid. We cannot give time assurances for certifications, but we will request that State Board staff expedite processing.

Q. What other permits will I have to get?

A. For State and Federal permits, you will need to apply for a Streambed Alteration agreement from the Department of Fish and Game and a 404 permit from the Corps of Engineers. If your project will affect coastal waters, you may need a permit from the California Coastal Commission. Projects that may impact endangered or threatened species will need a Biological Opinion form from the U.S. Fish and Wildlife Service. You will have to check with your city and/or county for local permits you may need.